IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

FRIDAY, THE 2ND NOVEMBER 2007 / 11TH KARTHIKA 1929

MFA.No. 1465 of 1997()

WCC.128/1994 of W.C.C.,KOZHIKODE
.....

APPELLANT - APPLICANT:

A. ABOO, S/O. KUNHUTTY, ARIVIL HOUSE,
KODUVALLY AMOSOM OF KOZHIKODE TALUK.

BY ADV. SRI.SUNNY MATHEW

RESPONDENTS - OPPOSITE PARTIES:
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1. O.K. ABDUL KAREEM, OTTANKANDATHIL HOUSE,
MADRASSA BAZAR, KODVALLY P.O. (DELETED)

2. NEW INDIA ASSURANCE COMPANY LTD.,
V.K. BUILDING, CHEROOTTY ROAD,
CALICUT -1.

R1 IS DELETED FROM THE PARTY ARRAY AT THE RISK OF THE APPELLANT AS PER ORDER DATED 17.10.2007 ON I.A. NO. 2276 OF 2007

BY ADV. SRI.MATHEWS JACOB (SR.)
SRI.JACOB MATHEW

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 02/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR ,J.

M.F.A.No.1465 of 1997

Dated, this the 2nd day of November, 2007

JUDGMENT

The claimant workman in W.C.C.No.128/1994 on the file of the Commissioner for Workmen's Compensation and Deputy Labour Commissioner, Kozhikode is the appellant. Appellant was a workman of the first respondent who was subsequently deleted from the party array. He sustained an employment injury on 11.10.1993. He filed a petition claiming compensation. The owner admitted the status of the appellant. Accident was also admitted. The only contention raised by him was that the insurer is liable to pay compensation. The insurer filed a written statement admitting coverage of insurance policy but denied the negligence alleged. Deputy Labour Commissioner awarded an amount of Rs.29,657/- as compensation finding that the appellant sustained a disability of 20%. Contending that the quantum of compensation awarded is too low the claimant himself has filed this appeal.

2. Learned counsel appearing for the appellant contended that the appellant produced Ext.A6 disability certificate which shows that the appellant sustained permanent disability of 45%. It is argued that the Deputy Labour Commissioner illegally rejected the certificate and fixed the disability at 20%. It is also argued that the lower authority went wrong only in allowing interest one

month after adjudication.

3. Learned counsel appearing for the insurer argued that in spite of specific request made by the insurer the appellant refused to appear before the Medical Board for getting himself examined. It is argued that Ext.A6 was issued by a Doctor who had absolutely nothing to do with the treatment of the appellant and the production of such a certificate was only for the purpose of creating evidence. It is also argued that interest awarded is correct. It is argued that the compensation fixed is illegal since the Deputy Labour Commissioner had calculated the same in accordance with the provisions of the amended Act though the accident occurred prior to the amendment of the Workmen's Compensation Act. Ext.A6 was issued by a Doctor who never treated the appellant. Insurer filed a petition for a direction to the appellant to appear before the Medical Board. Appellant flatly refused the request. The lower authority held that Ext.A6 is not genuine. I do not find any reason to differ from that finding. So the loss of earning capacity fixed by the Deputy Labour Commissioner is only to be confirmed. In view of the principle laid down in National Insurance Co.Ltd. v. Mubasir Ahmed (2007 (3) KLT 26(SC)) the interest become payable only after adjudication. So that finding is also correct.

4. The insurer did not file any appeal or cross appeal. So the contention of the insurer that the formula adopted for fixing the compensation is not in accordance with the provisions contained in the Workmen's Compensation Act

prior to the amendment also cannot be considered. So the appeal is only to be dismissed.

In the result, appeal is dismissed.

K. PADMANABHAN NAIR,
JUDGE.

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K.PADMANABHAN NAIR, J.

M.F.A.No.1465 of 1997

JUDGMENT

2nd November, 2007.